

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JAMES THOMAS FLEISCHAKER,

Civil File No. 05-1934 (JMR/FLN)

Plaintiff,

v.

REPORT AND RECOMMENDATION

STATE OF MINNESOTA,
COUNTY OF RAMSEY,
SECOND JUDICIAL DISTRICT
ST. PAUL, MINNESOTA,
DISTRICT COURT,

Defendants.

Plaintiff commenced this action on August 25, 2005, by filing a self-styled complaint, and an application seeking leave to proceed in forma pauperis ("IFP"). (Docket Nos. 1 and 3.) The Court previously examined Plaintiff's submissions and determined that his complaint failed to state an actionable claim for relief. The Court therefore entered an order, dated September 15, 2005, (Docket No. 6), which informed Plaintiff that his IFP Application would not be granted "at this time." The order granted Plaintiff leave to file an Amended Complaint, and expressly advised him that if he did not file a new pleading by October 7, 2005, the Court would recommend that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b).

The deadline for complying with the Court's prior order has now passed, and Plaintiff has not filed an Amended Complaint. In fact, Plaintiff has not communicated with the Court at all since he filed this action more than two months ago. Therefore, it is now recommended, in accordance with the Court's prior order, that Plaintiff be deemed to have

abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to “manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases”). Given Plaintiff’s failure to prosecute this case, the Court will also recommend that his motion for appointment of counsel, (Docket No. 2), be summarily denied.

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s Application To Proceed In Forma Pauperis, (Docket No. 3), be **DENIED**;
2. Plaintiff’s motion for appointment of counsel, (Docket No. 2), be **DENIED**; and
3. This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: November 1, 2005

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **November 21, 2005**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party’s brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.